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U.S. Department of Justice

Immigration and Naturalization Service

**PUBLIC COPY**

Office of Administrative Appeals  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



FEB 11 2008

FILE: WAC 02 074 50514 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:  
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(O)(i) of the Immigration and Nationality Act,  
8 U.S.C. 1101(a)(15)(O)(i)

IN BEHALF OF PETITIONER:



Identifying data omitted to  
prevent clearly unwarranted  
invasion of personal privacy

**INSTRUCTIONS:**

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a telecommunications company. The beneficiary is an entrepreneur and a software developer. The petitioner seeks O-1 classification of the beneficiary under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O), as an alien with extraordinary ability in business, in order to employ him in the United States for a period of three years as a Chief Technical Officer and Executive Vice President of Technical Services.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary is an alien of extraordinary ability in business and cannot be considered to be at the very top of his field of endeavor.

On appeal, counsel for the petitioner submits a brief arguing that the director failed to consider all the evidence submitted and that the beneficiary qualifies for O-1 classification because he satisfies criteria numbers two, three, five, six, seven and eight under 8 C.F.R. § 214.2(o)(3)(iii)(B), discussed below.

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

The sole issue raised in this proceeding is whether the petitioner has shown that the beneficiary qualifies for classification as an alien with extraordinary ability in business as defined by the regulations.

8 C.F.R. § 214.2(o)(3)(ii) defines, in pertinent part:

*Extraordinary ability in the field of science, education, business, or athletics means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.*

8 C.F.R. § 214.2(o)(3)(iii) states, in pertinent part, that:

*Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of science, education, business, or athletics. An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:*

(A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or

(B) At least three of the following forms of documentation:

(1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(2) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;

(3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;

(4) Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;

(5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;

(6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;

(7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;

(8) Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

(C) If the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

The beneficiary is a native and citizen of Israel. He completed a bachelor of medical science degree at the Hebrew University of Jerusalem. The beneficiary has been employed in computer science and business administration since 1981. He is currently the Chief Technology Officer and Executive Vice President of Business Development at Top Team, Inc., a leading provider of Oracle Applications data management services. He previously served as Vice President of Professional Services at SmartDB Corporation and Vice President of Business Development and President at Advanced Systems USA.

After reviewing the evidence submitted in support of the petition, the director found that the record does not establish that the beneficiary has achieved particular distinction apart from others in his field. The director concluded that the petitioner failed to establish that the beneficiary is an alien of extraordinary ability, and cannot be considered to be at the very top of his field of endeavor.

On appeal, counsel for the petitioner asserts that the director abused his discretion and incorrectly applied the law and Service policy.

There is no evidence that the beneficiary has received a major, internationally recognized award equivalent to that listed at 8 C.F.R. § 214.2(o)(3)(iii)(A). Neither is the record persuasive in demonstrating that the beneficiary has met at least three of the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B).

*Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

The petitioner did not explicitly claim that the beneficiary received any nationally or internationally recognized prizes or awards for excellence in his field of endeavor. Counsel for the petitioner stated that as the result of the work performed by the beneficiary on a product, one of the beneficiary's former employers, SmartDB Corporation, was awarded "Complementary Product of the Year" by Oracle Corporation for two years in a row (1995 and 1996). Given that the awards were not given to the beneficiary, they cannot satisfy this criterion.

*Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

Counsel for the petitioner asserts that the beneficiary's membership in the Oracle Applications Users Group (OAUG) satisfies this criterion. The petitioner states that the OAUG is an international association of over 4,000 companies. The petitioner failed to establish that membership is limited to those with outstanding achievements as judged by recognized national or international experts in their field. The beneficiary does not

meet this criterion.

*Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation.*

The petitioner provided the Service with three press releases and a business plan in relation to this criterion. All three press releases fail to make mention of the beneficiary. The press releases were issued by and about one of the beneficiary's former employers, Taviz Technology. The business plan specifically describes the beneficiary as one of the four owners and principals of Top Mine, Incorporated. It is not apparent that the business report was published in professional or major trade publications or major media.

*Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought.*

No evidence was submitted to satisfy this criterion.

*Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field.*

Counsel for the petitioner asserts that the beneficiary has made original business-related contributions of major significance in his field by virtue of his work on two products.<sup>1</sup> The record does not contain contemporaneous corroborating evidence such as news articles or articles in professional journals about the beneficiary's role in developing these products. The petitioner fails to demonstrate how the beneficiary has made a significant contribution to this field of endeavor. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

*Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media.*

On appeal, counsel for the petitioner asserts that the beneficiary has presented papers at four industry conferences. The petitioner failed to establish that these papers were published in professional journals or other major media as required by the regulation.

*Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation.*

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<sup>1</sup> Topic and SmartDB Workbench.

The petitioner asserts that the beneficiary has been employed in an essential capacity for several corporations: Chief Technical Officer and Executive Vice President for the petitioner; Vice President of Technical Services at Smart Corporation; President of Advance Systems USA; Manager of Manufacturing Systems Division at Contahal, Ltd.; and manager with Intel Corporation. According to one testimonial, the beneficiary guided Advance Systems USA to "go public" and the beneficiary helped Contahal, Ltd. become "a leading systems integrator and software development powerhouse." Without objective corroborating evidence, the petitioner has failed to establish that the beneficiary has been employed in an essential capacity for companies that have distinguished reputations.

*Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.*

The petitioner indicates that the beneficiary is paid an annual salary of \$150,000. The petitioner failed to provide the Service with any relevant salary data to establish that the beneficiary's wages are high in comparison to the wages of others similarly employed. The petitioner failed to establish that the beneficiary satisfies this criterion.

The extraordinary ability provisions of this visa classification are intended to be highly restrictive. See 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991). In order to establish eligibility for extraordinary ability, the statute requires evidence of "sustained national or international acclaim" and evidence that the alien's achievements have been recognized in the field of endeavor through "extensive documentation." The petitioner has not established that the beneficiary's abilities have been so recognized.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

**ORDER:** The appeal is dismissed.